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December 8, 2016

**OPPER
&
VARCO
LLP**

THE ENVIRONMENTAL
LAW GROUP

Via Electronic Mail and U.S. Mail

Mr. Frank Melbourn
California Regional Water Quality Control Board
San Diego Region
2375 Northside Drive, Suite 100
San Diego, CA 92108

fmelbourn@waterboards.ca.gov

Re: Comments on Tentative Addendum No. to Cleanup and Abatement Order
No. R9-2013-0122

Dear Mr. Melbourn:

Opper & Varco LLP has recently been retained by Burrtec Waste Industries, Inc. ("Burrtec") to represent it in matters relating to Cleanup and Abatement Order ("CAO") R9-2013-0122 and Tentative Addendum No. 1 which indicates the possibility of adding Burrtec as a Discharger to the CAO. Your letter of November 30, 2016 requests comments on the Tentative Addendum by December 14, 2016. We respectfully request that the Regional Water Quality Control Board ("RWQCB") agree to extend the time for Burrtec to comment on the Tentative Addendum to 5:00 p.m. on January 17, 2017.

Burrtec was surprised to receive the Tentative Addendum proposing to add Burrtec as a discharger to the CAO. Burrtec was further surprised by some of the information asserted in Mr. Altona's letter of November 16, 2016, and by the Findings in the Tentative Addendum to the CAO which suggest that Burrtec was involved in the application and spreading of the material and that Burrtec had any interaction with Mr. Pike. Much of this information is incorrect and Burrtec requests the opportunity to appropriately respond. Given that this matter also involves active litigation, preparing a full, fair and adequate response to Mr. Altona's letter and the factual and legal assertions in the Tentative Addendum requires more than the nine business days provided by the RWQCB.

Furthermore, adding Burrtec as a discharger to this CAO creates novel issues of fact and law that we believe should be more thoroughly evaluated before the RWQCB adds Burrtec as a discharger. California Water Code Section 13304(a) provides that the RWQCB may issue an order to, "Any person who has . . . caused or permitted, causes or permits, or threatens to cause or permit any waste to be

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discharged or deposited where it is, or probably will be, discharged into the waters of the state, and creates, or threatens to create a condition of pollution or nuisance . . .” Burrtec is simply a supplier of recycled materials; Burrtec did not spread any of the material on the properties and has no involvement in how or where materials are applied to any specific property. Burrtec also has no relationship with either Mr. Pike or PAGC by contract or otherwise.

Given these and other significant issues, Burrtec requests that it be provided additional time to provide comments on the Tentative Order; it is important for RWQCB staff to have complete information before it proceeds. Burrtec therefore requests that the time for it to submit comments on Tentative Addendum No. 1 to CAO R9-2013-0122 be extended until 5:00 p.m. on January 17, 2017.

We appreciate your consideration of this issue and would greatly appreciate your response as soon as possible given that the current deadline of December 14 is now only four business days away.

Yours very truly,
OPPER & VARCO LLP



Suzanne R. Varco

SRV/ssr

cc: Julie Chan, RWQCB (via email only)
Brent Clemmer, Esq. (via email only)
Service List for *Pike et al. v. Organic Ag., Inc., et al.*, Case No. MCC1401513